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The following index and digest contain the legal cases and other editorial features which have appeared in THE BANKING LAW JOURNAL during 1947.

The entire arrangement, including the number of sections, follows the plan of the fifth edition of the BANKING LAW JOURNAL DIGEST. The DIGEST, with cumulative Supplement to Fifth Edition, contains the digest of more than 10,000 banking decisions which have been published in THE BANKING LAW JOURNAL from the time of its establishment in 1889 down to December, 1947.

ACCOMMODATION PAPER

§26. Rights of accommodation maker or indorser.

Where a note signed by an accommodation maker is paid from the assets of his estate after his decease, the administrator has a cause of action against the accommodated party to recover the amount paid. Mead Co. v. Doerfler, Neb. 26 N. W. Rep. (2d) 393. 64 B. L. J. 644.

Where a party signs negotiable instruments as maker, without receiving value therefor and for the purpose of lending his name to some other person, he is an accommodation party, and, as between himself and the party accommodated, he is only secondarily liable, and, upon payment of the liability, is entitled to be exonerated by the party accommodated. Schram v. Spivack, 68 Fed. Supp. 451. 64 B. L. J. 308.

Where evidence showed that payee refused to make loan unless wife signed with her husband and that she did sign as maker in payee's presence and that loan was made to help prevent foreclosure on their home, and that thereafter wife wrote payee assuring him that she and her husband would pay the note, it was held that wife was at the very least an accommodation maker and liable as such. Alvarado v. Rosenberg, D. C., 50 Atl. Rep. (2d) 269. 64 B. L. J. 334.

AGENTS

§56. Agents authority.

If by the acts under which agent claims to have purchased note and mortgage, he was acting as agent for principal, such acts did not amount to a purchase of the obligation. Somerville v. Smith, Tex., 200 S. W. Rep. (2d) 242. 64 B. L. J. 718.

Where evidence shows that defendant procured certain checks from victim for the purpose of using the proceeds to buy property for him, this constituted defendant an agent with authority to cash the checks and use the proceeds for the purpose specified. State v. Florian, Mo., 200 S. W. Rep. (2d) 64. 64 B. L. J. 581.

An agent of a bank with express authority to accept payment of balance due on a note, and authorized and directed by bank as principal to take voluntary possession of mortgaged chattels and title thereto, has authority, in absence of proof to the contrary and notice of such limitation on the authority, to make an agreement with maker of note to cancel balance due on note in consideration of transfer of title and possession. Home State

Bank of Hobart v. Sullins, Okla., 178 Pac. Rep. (2d) 86. 64 B. L. J. 613.

BANKING

§124. Bank examinations.

There is nothing so privileged about the records of a bank's transactions with its depositors, with whom there is a relationship of debtor and creditor, or about a fiduciary relationship with its customers, as to preclude agents of the revenue department from seeing those records for the purpose of determining what items therein relate to or are connected with the tax returns under investigation, even though such records may contain items immaterial to the returns being investigated. United States v. First National Bank of Mobile, 67 Fed. Supp. 616. 64 B. L. J. 102.

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BANKRUPTCY

§138. Appointment and powers of receiver—superintendent of banks.

The duties of a receiver are to take possession of property and to conserve, collect, and distribute it as an arm of the court, and a liquidating agent of a national bank is nothing more than an agent of the owners. Dobler v. Bawden, Iowa, 25 N. W. Rep. (2d) 866. 64 B. L. J. 393.

Under the statute the receiver of a national bank cannot sell bank's assets without approval by the comptroller and by the court, and until such approval there is no binding contract. Reibman v. Federal Deposit Insurance Corporation, 66 Fed. Supp. 409. 64 B. L. J. 50.

The Superintendent of Banks is not deprived of his power to conduct an investigation under the Banking Law (Section 38) in connection with the liquidation of the bank in question simply because an action is pending between the claimant and the bank in liquidation. Application of Standard Vacuum Oil Co., 65 N. Y. Supp. (2d) 367. 64 B. L. J. 426.

§142. Preferences within four months of bankruptcy.

If a bank, in the ordinary course of business, receives deposits from a depositor before and during four months next preceding such depositor's adjudication in bankruptcy, and if during such four month period, with notice that such depositor is in financial difficulties, the bank applies his deposits against his indebtedness to the bank, it is held that the bank has not thereby received a voidable preference under provisions of Bankruptcy Act. In re Cummins Construction Corporation, 72 Fed. Supp. 409. 64 B. L. J. 968.

§153. Priorities among creditors—deposits of public moneys entitled to preference.

Where Sanitary District passed a resolution designating bank as one of the depositories of its funds, it was held that the deposits by the District with the bank were not made in the manner required by statute, in that the bank was never selected as a temporary or assistant treasurer. Fidelity & Casualty Co. of New York v. Niles Bank Co., Ohio, 70 N. E. Rep. (2d) 229. 64 B. L. J. 413.

§170. Claims provable.

A trustee in bankruptcy, who within six months after the Superintendent of Banks rejected a claim filed by him brought an action on the claim in a federal court which was dismissed for want of jurisdiction, may not thereafter, if six months have meanwhile expired since the rejection of the claim, bring a new action on the claim in a state court. Carr v. Yokohama Specie Bank, Ltd., and Superintendent of

Banks of the State of New York, 69 N. Y. Supp. (2d) 262. 64 B. L. J. 479.

§177. Reorganization.

Where closed bank resumed business pursuant to publication of notice of reorganization in conformance with state statutes and regulations of the United States Treasury and state banking department and notice states that detailed plan for the resumption of business is on file with state banking authorities which is available to all depositors, creditors and stockholders of the bank, and county supervisors having notice of plan, filed no objections to the plan, and upon reopening of the bank the county through its treasurer accepts a 50 per cent dividend and certificate of participation and subsequently accepts other dividends from trust fund set up under said plan, it is held that the county is precluded from bringing any action to review bank's method of collecting stock assessment levy and the appropriation of the proceeds of that assessment for reorganization of bank. Presque Isle County v. Presque Isle County Savings Bank et al, Mich., 24 N. W. Rep. (2d) 186. 64 B. L. J. 38.

Where stockholders of trust company had delayed five years in asserting their rights against court's approval of reorganization plan, the court refused to allow any equitable relief on the grounds that innocent persons had meanwhile acquired rights and positions had been changed so that a recission would now result in almost inextricable confusion. Holmes v. Union Bank of Commerce Co., Ohio, 73 N. E. Rep. (2d) 100. 64 B. L. J. 808.

BONDS

Joint Stock Land Bank bonds.

The declaration by Congress, in section 26 of the Federal Farm Loan Act, that first mortgages and farm loan bonds issued under the act "shall be deemed and held to be instrumentalities of the Government of the United States" did not necessarily make Joint Stock Land Bank bonds obligations of the United States. Bankers Farm Mortgage Co. v. United States, 69 Fed. Supp. 197. 64 B. L. J. 369.

COLLECTIONS

§309. Par collections.

The Nebraska Par Check Law does not impair the obligations of any contract between drawee banks and any other person, either depositor or holder, and therefore is not repugnant to section 10, article 1, Constitution of the United States, which has reference only to laws enacted after the making of contracts, the obligations of which are claimed to be impaired. Placek v. Edstrom, Nebr., 26 N. W. Rep. (2d) 489. 64 B. L. J. 559.

§329. Title of collecting bank.

When negotiable paper indorsed without restriction is deposited in a bank and the depositor's account is at once credited with the amount thereof, the depositor becomes the creditor of the bank; the bank becomes owner of the paper, and in making the collection is not the agent for the depositor, notwithstanding any right of the bank to charge back in the event of dishonor. Martin v. Huber, 68 N. Y. Supp. (2d) 53. 64 B. L. J. 475.

CONSIDERATION

§342. Instances of sufficient consideration.

In an action brought by a holder for value upon an accommodation note, the consideration which passed to the accommodated party is sufficient to sustain the accommodation maker's promise to pay. First State Bank of Hope v. Borglum, N. D., 27 N. W. Rep. (2d) 230. 64 B. L. J. 732.

§344.—Antecedent debt.

The giving of a new note for a previous indebtedness is generally treated as a new contract, which merges the previous obligation, and results in the new or substituted agreement becoming the evidence of the indebtedness. Schwab v. Schlumberger, Tex., 198 S. W. Rep. (2d) 79. 64 B. L. J. 409.

§346.—Outlawed debt.

The giving of a note in place of a prior one, even though the latter is outlawed, does not involve a failure of consideration. The old debt is the consideration for the new promise but the new promise, and not the old debt, is

the measure of the creditor's right. Samales v. Essie, N. H., 51 Atl. Rep. (2d) 639. 64 B. L. J. 979.

§352. Want or failure of consideration.

One who gives a note in renewal of another note, with knowledge at the time of a partial failure of the consideration for the original note, waives such defense and cannot set it up to defeat a recovery on the renewal note. Fairfax National Bank v. Burt, Okla., 176 Pac. Rep. (2d) 216. 64 B. L. J. 427.

A negotiable instrument is presumed to be based on a valid consideration, and the burden of showing want or failure of consideration is on the defendant when he admits executing the note. Murphy v. Osborne, Ark., 200 S. W. Rep. (2d) 517. 64 B. L. J. 729.

Although there was no affirmative defense of lack or failure of consideration for the negotiable instrument in the hands of one not a holder in due course and for value, the court, in the interests of justice, should have permitted the defendant to offer proof that the consideration for which the instrument had been given had failed. Berler v. Grossman, 67 N. Y. Supp. (2d) 520. 64 B. L. J. 520.

DELIVERY

§384. Presumption of delivery.

As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. Where instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him, so as to make them liable to him, is conclusively presumed. Gimbel Bros., Inc., v. Hymowitz, Pa., 51 Atl. Rep. (2d) 389. 64 B. L. J. 557.

Negotiable paper can be transferred without endorsement, but possession and delivery do not raise any presumption of ownership. Sun-Herald Corporation v. Collector of Internal Renveue, 160 Fed. Rep. (2d) 475. 64 B. L. J. 703.

DEPOSITS

§390. Relation between bank and depositor

Where savings bank failed to follow the directions on the withdrawal slip signed by depositors, and when later depositors demanded the return of their money it was held that bank became liable as a matter of law for the breach of the implied agreement arising out of the deposit of the money. Boardman v. Connecticut Savings Bank, Conn., 51 Atl. Rep. (2d) 925. 64 B. L. J. 626.

§398. Effect of crediting deposits.

Funds credited by bank to wrong account by mistake belong to bank, which may recover them from depositor to whom they have been credited after he has drawn them out, and where mistake is discovered before they are drawn out, bank may debit the account and give proper credit to person who deposited the money. Gaines Bros. Co. v. Fourth National Bank of Tulsa, Okla., 179 Pac. Rep. (2d) 145. 64 B. L. J. 805.

§404. General deposits.

Where a bank was designated as a depository without designating it as "temporary or assistant treasurer," it was held that the phrase "as temporary or assistant treasurer," in the provision of General Code (Section 6602-79, Ohio) that the "depository shall give bond, as temporary or assistant treasurer," modified the word "bond" and not "depository," and the failure of the sanitary district to designate the bank "as temporary or assistant treasurer" did not render the deposit illegal and change it to a trust fund. Fidelity & Casualty Co. of New York v. Niles Bank Co., Ohio, 71 N. E. Rep. (2d) 742. 64 B. L. J. 496.

§412. Deposits by corporate officials and other agents.

Where depositor directed bank to set aside $23,000 from its depositor's general funds and to keep them in an account designated as "Special Preferred Stock Retirement Fund Account," but the resolution covering withdrawals from the bank refers to the designation of the account, placing no limitation whatever on the right of withdrawal, it was held that the funds so set aside did not constitute trust funds and consequently judgment creditor of

corporate depositor could maintain statutory action brought in aid of an attachment against the bank. Lewis v. Chase National Bank of City of New York, 69 N. Y. Supp. (2d) 79. 64 B. L. J. 624.

§416. Deposits by executors and administrators.

A bank is authorized to pay the amount of the deposit, or any part thereof, upon the personal check of the fiduciary, without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith. Strong v. City National Bank of Philadelphia, Penn., 50 Atl. Rep. (2d) 323. 64 B. L. J. 185.

§417. Deposits by trustees.

A deposit by the trustee with itself, instead of in another bank, was held to be legally authorized, and the resulting relationship was that of debtor in the banking department to creditor in the trust department. City Bank Farmers Trust Co. v. Pedrick, 69 Fed. Supp. 517. 64 B. L. J. 461.

§425. Deposits in two names—Indiana.

Where a deposit in a bank is made to the joint account of the alleged donor and donee, but the evidence of such deposit is retained by the donor, it is held that there is no effective gift, for the reason that the donor has not parted with his dominion; and especially is this held to be true in cases in which the fact of such deposit has not been communicated to the donee. Ogle v. Barker, Ind., 68 N. E. Rep. (2d) 550. 64 B. L. J. 240.

Where all the funds in a bank account held in joint tenancy have been deposited by one party, it must appear that the other party's interest therein rests upon a valid contract, gift or trust. Hibbard v. Hibbard, Ind., 73 N. E. Rep. (2d) 181. 64 B. L. J. 905.

§430.—Maine.

Where husband brings suit seeking an accounting for and recovery of money withdrawn from a savings account opened by husband and later converted into a joint account, and wife raises issue of clean hands because of alleged intent of husband to defraud creditors, it is held that though evidence warrants a finding for husband, nevertheless, the court cannot make a final decision disposing of funds of joint account pending final determination of issue of clean hands. Vassar v. Vassar, Maine, 48 Atl. Rep. (2d) 620. 64 B. L. J. 140.

§437—New York.

Where money originally derived from earnings of husband was turned over to his wife, not with any earmarks thereon, but for the purpose of running his home, and where wife through her economy and frugality managed to save from such earnings moneys that went to make up a joint bank account, it was held that the husband as a matter of law was not the owner of the whole sum, but merely of his moiety which should be one half of the amount so deposited. Michaels v. Michaels, 69 N. Y. Supp. (2d) 668. 64 B. L. J. 649.

Where funds were deposited in a bank to the joint account of plaintiff and defendant, and U. S. Government bonds were issued in the names of both parties, it was held that a presumption of joint tenancy was created as to the bank account, such presumption, however, being rebuttable; as to the bonds the fact that defendant caused them to be issued in both names did not create a joint tenancy in the strict sense. Gaylord v. Gaylord, 68 N. Y. Supp. (2d) 514. 64 B. L. J. 731.

§448.—Survivor entitled to fund—Arkansas

Where bank deposits are held by two persons jointly in the following manner, "P and H payable to either of them and in event of death payable to survivor" and P dies intestate, it is held that the deposits do not become the property of P's estate on his death, but pass by operation of law to H, as the survivor of a joint tenancy. Pye v. Higgason, Ark., 195 S. W. Rep. (2d) 632. 64 B. L. J. 26.

§458.—New Jersey.

Leaving an instrument in envelope addressed to payee among maker's own papers with intention to give effect to it as a legacy on maker's death is not a sufficient delivery, particu-

larly where it was not brought to payee's knowledge or where maker mentioned it as deposited with a bank for payee, but actually left it among his own private papers. Strant v. Hollinger, N. J., 50 Atl. Rep. (2d) 478. 64 B. L. J. 401.

§459.—New York.

The withdrawal by a joint tenant of his moiety or less from a joint bank account for his own use destroys the tenacy as to such withdrawals, but without affecting the right of survivorship as to the balance. Petition of Cummings, 66 N. Y. Supp. (2d) 799. 64. B. L. J. 639.

§462. Deposits in trust.

Where mother opened savings accounts as trustee for daughters and withdrew moneys from the accounts for her own purposes, there was no gift of the money to her daughters and no trust was created for their benefit. Abruzzese v. Oestrich, N. J., 47 Atl. Rep. (2d), 883. 64 B. L. J. 52.

§465. Unclaimed deposits.

The only item chargeable against bank accounts to be taken over by the state under escheat statute is for expense incurred by the bank in publishing notice to advise those whose interest may be affected, that the time has come for the transfer of the amount due from the bank on such accounts to the state. State v. First Wisconsin National Bank of Milwaukee, Wis., 26 N. W. Rep. (2d) 161. 64 B. L. J. 594.

§470. Deposit confiscated by foreign government.

Where plaintiff, a non resident of Czechoslovakia enters into a contract with a Czechoslovakian bank for the deposit of money and securities with the Prague office of said bank and by the terms of the contract it is agreed that the bank's office in the City of Prague, Czechoslovakia, is to be the place of performance of the contract and of the payments to be made to plaintiff, it is held that the liability of the bank is to be determined under the laws of Czechoslovakia and the laws of said country prohibiting the payment of money or securities to a non resident without the consent of the foreign control Authorities of Czechoslovakia are also to be considered in determining the plaintiff's right to payment of funds. Kraus v. Zivnostenska Banka, 64 N. Y. Supp. (2d) 208. 64 B. L. J. 229.

Adverse claim to deposit.

Under New York statute notice to a bank or trust company of an adverse claim to a deposit of cash or securities standing on its books to the credit of, or held for the account of, any person shall not be effectual to cause said bank or trust company to recognize said adverse claimant unless it sees fit in the circumstance. Hozova v. Guaranty Trust Co. of New York, 66 N. Y. Supp. (2d) 875. 64 B. L. J. 295.

FEDERAL DEPOSIT INSURANCE CORPORATION

§536. Deposit insurance.

The Federal Deposit Insurance Corporation is liable for the acts of its agents within the scope of their authority, particularly in view of the fact that the FDIC as principal has received the benefit of contract made by its agent. Cleveland Wrecking Co. of Cincinnati v. Federal Deposit Ins. Corporation, 66 Fed. Supp. 921, 64 B. L. J. 131.

The term "insured deposit" as provided in 12 U. S. C. A., sec. 264 (c) (13) means the net amount due to any deposit or deposits in an insured bank (after deducting offsets) less any part thereof which is in excess of $5,000. Such net amount shall be determined according to such regulations as the board of directors may prescribe, and in determining the amount due to any depositor there shall be added together all deposits in the bank maintained in the same capacity and the same right for his benefit either in his own name or in the names of others, except trust funds which shall be insured as provided in paragraph (9) of subsection (h) of this section. Billings County, N. D. v. Federal Deposit Insurance Corporation, 71 Fed. Supp. 696. 64 B. L. J. 869.

FEDERAL RESERVE BANKS

Regulation of holding companies.

Where the restrictive condition imposed by the Board of Governors singled out one holding company and

prohibited it from owning any shares of the member bank and the avowed purpose was to prevent further expansion of the named holding company, it was held that the condition imposed was not expressive of, but contrary to, a plainly evident legislative intent, and therefore ultra vires and invalid. Peoples Bank v. Eccles et al., 161 Fed. Rep. (2d) 636. 64 B. L. J. 855.

Regulation as to underwriting of securities.

Board of Governors did not transcend its authority by applying section 32 of the Banking Act of 1933 to a situation where the underwriting of securities was not first in volume as compared with other businesses of the company involved, and that the word "primarily" was not limited in meaning to "chiefly" or "principally" and that it meant "substantiality" as well. Board of Governors of Federal Reserve System v. Agnew, U. S., 67 Sup. Ct. 411. 64 B. L. J. 115.

FOREIGN EXCHANGE

§546. Liability in foreign exchange transactions.

Where Iranian bank remitted, through New York agency of Japanese bank, money to several Japanese branches of Japanese bank, and New York agency subsequently notified Iranian bank that home office had instructed New York agency to refund such money and that New York agency would make refund on receipt of Federal Reserve Bank license, and war was declared before license could be procured, and superintendent of banks took over assets of New York agency, Iranian bank was entitled to preferred claim against assets of New York agency. Banque Mellie Iran v. Yokohama Specie Bank, 64 N. Y. Supp. (2d) 804. 64 B. L. J. 98.

FORGED PAPER

§549. Forged paper in general.

Evidence that defendant's full name was "John Wesley Williams," that he was also known as "John Williams, Jr.," and that he signed the name "John Williams" to a check for the purchase price of an automobile misrepresenting that he had a substantial bank account was insufficient to sustain a conviction of forgery of the name, "John Williams" who was defendant's father and had an account at the bank. Williams v. State, Ala., 31 So. Rep. (2d) 590. 64 B. L. J. 915.

§552. Drawee may not recover money paid on check bearing forged signature.

The negligence on the part of the drawer of a check in issuing the check is not available as a defense to a bank, which collects the check on a forgery of the payee's endorsement, in an action by the drawee bank against the collecting bank to recover the amount of the check. The negligence of the drawer is immaterial unless it is such as directly or proximately affects the conduct of the bank in the performance of its duties. United States v. Mercantile National Bank at Dallas, 67 Fed. Supp. 759. 64 B. L. J. 1.

§556. Drawee allowed to recover money paid on check bearing forged signature.

Evidence disclosing that plaintiff preparing for extended vacation signed checks payable to plaintiff's corporations and left checks with general manager of company which had been employed as accountant and auditor for plaintiff's corporations, and that checks had been cashed but proceeds had not been accounted for, supported judgment against the audit company. Corporation Audit Co. v. Cafritz, 156 Fed. Rep. (2d) 839. 64 B. L. J. 21.

§562. Liability of drawee bank to drawer where check paid on forged indorsement — where drawer negligent.

Where depositor signed check in blank, thus putting it in the power of an unauthorized person to fill it in and present it for payment, it was held that the depositor's act made the loss possible and caused it, and enabled the thief to commit the fraud. Consequently, the deopsitor's acts in this respect are a bar and an estoppel in her suit against the drawee bank, thus preventing any recovery on her part. Weiner v. Pennsylvania Co. for Insurances on Lives and Granting Annuities, Pa., 51 Atl. Rep. (2d) 385. 64 B. L. J. 553.

§572. Depositor's duty to examine returned vouchers and report irregularities to bank.

A bank which was the depository of funds of a bankrupt estate, and which paid checks on which the trustee in bankruptcy had forged the signature of the referee, is not liable for the payment if it was not notified of the forgeries within one year after the return of the vouchers to the referee. Maryland Casualty Co. v. Central Trust Co., 67 N. Y. Supp. (2d) 339. 64 B. L. J. 382.

Where, over a period of years, the general manager of a corporation deposited, without any authority, in a bank to his own personal account instead of to the corporation's account, checks made payable to the order of the corporation, the latter's failure to report any variance or discrepancy between its books and the periodic statements furnished it by the bank precludes any recovery by such corporation against such bank for conversion of the checks and the proceeds thereof, where the corporation had entrusted the duty of examining the statements to a dishonest bookkeeper. Portsmouth Clay Products Co. v. National Bank of Portsmouth, Ohio, 69 N. E. Rep. (2d) 653. 64 B. L. J. 93.

§577.—Depositor not required to look for forged indorsements.

A depositor is not bound to examine the indorsement on returned checks since he has the right to assume that the bank has ascertained the fact to be that the indorsement is genuine. Edgington v. Security-First National Bank of Los Angeles et al, Cal., 179 Pac. Rep. (2d) 640. 64 B. L. J. 679.

§580.—Drawee held not liable.

In order for a payee to recover money paid to a cashing bank by drawee bank on a check bearing his forged endorsement, he must notify the cashing bank within a reasonable time after discovering the forgery. Magid v. Drexel National Bank, Ill., 71 N. E. Rep. (2d) 898. 64 B. L. J. 488.

§581.—Collecting bank held liable.

The liability of the collecting bank to repay the moneys paid out on forged indorsements which were guaranteed by the collecting bank to the depositary bank is absolute, and not in any wise dependent upon the liability of the depositary bank to its depositor. The liability of the collecting bank upon such warranty, therefore, has not been changed or qualified by section 43 of the Negotiable Instruments Law. National Surety Corporation v. Federal Reserve Bank of New York, 70 N. Y. Supp. (2d) 636. 64 B. L. J. 763.

§588. Check delivered to impersonator—rights of drawee bank.

Where a person has been induced by fraud to draw a check to the order of an existing person, whose name and identity has been fraudulently assumed by another, and to deliver the check to the impostor, it is held that an endorsement by the impostor is not a forgery and the bank upon which it is drawn may pay upon such indorsement. Imperial Motors, Inc., v. President and Directors of Manhattan Co., 65 N. Y. Supp. (2d) 86. 64 B. L. J. 232.

§597. Criminal prosecutions.

A forged indorsement on a genuine check of the United States is a forged "writing" included in statute defining offense. 18 U. S. C. A., §73. Conklin v. Cozart, 158 Fed. Rep. (2d) 677. 64 B. L. J. 592.

The crime of forgery is complete with the making of a false instrument, the subject of forgery with intent to defraud, and it is immaterial whether any one was in fact defrauded. People v. Christison, Ill., 72 N. E. Rep. (2d) 187. 64 B. L. J. 647.

Where defendants purchased war savings bonds at a discount from the owners and thereafter obtained checks from the original bond owners after the bonds were redeemed, it was held that they had implied authority to sign the names of the original bond owners on the checks and therefore were not guilty of forgery for signing the checks with the names of the payees. United States v. Sonnenberg, 158 Fed. Rep. (2d) 911. 64 B. L. J. 387.

FRAUD

§598. Instrument obtained by fraud.

Where a person did not intend to sign a promissory note that he was by fraud and deceit and without negligence on his own part tricked into signing that which afterwards proved to be a note, the instrument is a forgery and void, as to all parties. Branz v. Stanley, Maine, 51 Atl. Rep. (2d) 192. 64 B. L. J. 590.

GIFTS

§601. Gifts causa mortis.

The delivery of a savings bank book with the intent to make a gift of the deposit therein recorded, whereby the donor relinquishes the dominion and control of the account, transfers title to the fund. Borthwick v. Skurzynski, N. J., 52 Atl. Rep. (2d) 443. 64 B. L. J. 736.

HOLDERS IN DUE COURSE

§628. Payee as holder in due course.

The mere fact that note was purchased for an amount less than its face value, was not of itself sufficient to charge the purchaser with notice of existing equities, unless the consideration was merely nominal. The indorsee, therefore, was held to be a purchaser for value and a holder in due course though he paid $129.06 for note for principal sum of $198.55. Credit Adjustment Co. v. McCormick, Okl., 178 Pac. Rep. (2d) 610. 64 B. L. J. 726.

§639. Holder must take in good faith.

One who purchases commercial paper for full value before maturity does not owe to the one who put the paper afloat the duty of active inquiry. His rights are not to be deemed affected by constructive notice unless it clearly appears that the inquiry suggested at the time of purchase would if fairly pursued result in the discovery of the hidden defect. Manufacturers & Traders Trust Co. v. Sapowitch, N. Y., 72 N. E. Rep. (2d) 166. 64 B. L. J. 292.

Circumstances which will justify an inference that the purchaser of a negotiable instrument acted in bad faith, so as not to be a holder in due course, must be pointed and emphatic and must lead directly and irresistibly to that conclusion. Chicago District Electric Generating Corporation v. Evans, Ind., 69 N. E. Rep. (2d) 627. 64 B. L. J. 297.

§660. Burden of proof.

Where defendant relied upon defense of breach of warranty, this was held not one of the defenses or defects specified in Negotiable Instruments Law, and the burden therefore, is upon the defendant to establish that the plaintiff is not a holder in due course. Schwartz v. Armand Fried, Inc., 69 N. Y. Supp. 34. 64 B. L. J. 901.

INDORSEMENTS

§674. Form of indorsement.

The stamping of a number is not an indorsement in writing and therefore not sufficient to pass title as a holder in due course, free from the defenses against the fraudulent maker of the Pac. Rep. (2) 954. 764 B. L. J. 671. Pac. Rep. (2d) 954, 64 B. L. J. 671.

§683. Capacity in which party signing is liable—guarantor.

There is a presumption that all persons whose names appear as obligors on a note, in the absence of some showing to the contrary, are principals; and although the wife's name may appear below that of her husband's on a note, yet it will be presumed, as in the case of any other obligor, that she is the principal debtor, but that presumption may be rebutted by proof of surrounding circumstances indicating to the contrary. Evans' Administrator v. Evans, Ky., 199 S. W. Rep. (2d) 734. 64 B. L. J. 577.

§688. Striking out indorsement.

The holder of a negotiable instrument may at any time strike out any prior endorsement which is not necessary to his title. Christian v. California Bank et al., Cal., 173 Pac. Rep. (2d) 318. 64 B. L. J. 283.

§690. Release of indorser.

Where a note finds its way back into the hands of the payee, it is held that a subsequent holder has no greater right than he from whom the instrument is acquired, and that an endorser, intermediate of the first and second endorsement by the payee or another, cannot be regarded as in the line through which the holder can trace his title. Denniston's Adm'r v. Jackson, Ky., 200 S. W. Rep. (2d) 477. 64 B. L. J. 982.

§691. Release of indorser—effect of extension of time.

An agreement between the holder of a negotiable instrument and the principal debtor which will discharge the party secondarily liable must be a valid and binding agreement, and one which presents a legal obstacle for the time to the prosecution of an action upon the original instrument. Barnett v. First National Bank in Meridian, Miss., 29 So. Rep. (2d) 922. 64 B. L. J. 723.

INSURANCE

§713. Forgery insurance.

Where fidelity company relied upon the false representation of defendant that his signature upon the check was forged, and having justifiably done so and paid the bank as for a loss insured under banker's blanket bond, it was held that defendant is now estopped from relying upon the genuineness of his signature to show that the payment was not actually that of a loss within the coverage of the bond. Fidelity & Deposit Co. of Maryland v. Krout, 157 Fed. Rep. (2d) 912. 64 B. L. J. 330.

INTEREST

§740. Construction and validity of interest clause.

Where the parties to a secured note payable "on or before ten years from date" entered into an oral agreement that payment of interest due September 1 of each year would be postponed to such time as debtor "received money from the sale of crops on the property" and the consideration therefor was that at such time debtor "pay the interest and principal due the first of March the following year, in addition to the past due interest," it was held that the oral agreement was not void under the statute of frauds since the original contract could have been performed and the entire indebtedness discharged within one year. Payment of interest and principal in advance of the due date constituted ample consideration for the oral agreement. Kuhlmann v. McCormack, Col., 180 Pac. Rep. (2d) 863. 64 B. L. J. 820.

§742. Computation of interest.

Where a claim under an agreement is certain and liquidated or is ascertainable but because of the allowance of an unliquidated setoff or counter claim it is reduced, interest is allowed on the balance found to be due. Hoelzel v. Gavalas, N. J., 52 Atl. Rep. (2d) 54. 64 B. L. J. 714.

Where the language of the note specifically provides for interest "until paid," it would seem that the contract rate of interest should be applicable after maturity. However, the right to that interest became barred with the expiration of the four-year period prescribed by the statute of limitations. In re Hall, 70 Fed. Supp. 27. 64 B. L. J. 586.

§745. Interest on deposits.

Resident alien depositors who are entitled to receive 100 per cent of their principal in a Japanese bank are entitled to interest on the principal. Kujoichi Fujikawa v. Sunrise Soda Water Works Co., 158 Fed. Rep. (2d) 490. 64 B. L. J. 571.

Where the United States is, in effect, an assignee of the Russian government which, in turn, acquired claim to demand deposits against New York bank, a member of the Federal Reserve System, it was held that the claims did not "ultimately derive from a federal law" or from a contract made between the bank and the United States. The rights are derived from contracts made between depositor and defendant and accordingly, it was held, that the rate of interest on deposit should be computed at the contracted rates until the effective date of the federal statute forbids payment on interest on demand deposits by members of Federal Reserve System. The proper rate of interest from the date of the breach was 6% in accordancce with the New York statutes. Steingut v. Guaranty Trust Co. of New York, 161 Fed. Rep. (2d) 571. 64 B. L. J. 897.

§748. Interest on coupons.

Under the law of Missouri, although a note provides for the payment of interest at stipulated periods, interest on past-due interest will not be allowed in the absence of an express provision therefor. Mississippi Valley Trust Co. v. Oklahoma Ry Co., 156 Fed. Rep. (2d) 283. 64 B. L. J. 325.

INVESTMENT AND FINANCE

By Oscar Lasdon

Comments on current developments of interest to investment officers of banks and those responsible for investment policies. 64 B. L. J. 87, 175, 271, 361, 452, 543, 605, 661, 758, 848, 935.

LETTERS OF CREDIT

§766. Letters of credit.

A letter of credit from the purchaser stating the terms of the bargain to bind the seller is held insufficient to take contract out of statue of frauds unless seller accepted it in writing or made at least part delivery of the goods. Anchor Trading Corporation v. Joseph T. Ryerson & Son, Inc., 69 N. Y. Supp. (2d) 844. 64 B. L. J. 803.

A provision in a contract for the sale of merchandise, which required the buyer to open a letter of credit, "payment to be effected after passing Food and Drug Administration," was not complied with by his opening a letter of credit which provided that drafts should be honored only after the bank had received from him "written notice stating that the merchandise has been released by the U. S. Food and Drug Administration and further indicating the amount to be paid." Catz American Co., Inc. v. March, 69 N. Y. Supp. (2d) 805. 64 B. L. J. 676.

LIEN AND SET-OFF

Bank's Lien or Right of Set-Off Against Depositor

§771. Lien and set-off in general.

Where securities for chattel mortgage on boat have been exhausted by foreclosure and sale, and a balance of the indebtedness remains unpaid, a bank has the right to offset the unpaid balance of the then unsecured debt by application of the debtor's credit on deposit in bank. Nelson v. Bank of America Nat. Trust & Savings Assn., Cal., 173 Pac. Rep. (2d) 322. 64 B. L. J. 313.

LOST OR STOLEN INSTRUMENTS

§828. Right to bond found on premises of safe deposit company.

Any chattel found in a private room of a bank, access to which was had only by persons renting safe deposit boxes, must have been the property of one of the bank's customers, and any property, whether left in the customer's box, or left in the private room, is in a true sense in the custody of the bank as the agent of its customer, or at least the bank occupies toward its customer some fiducial relationship which imposes upon it the duty of caring for his property, whether the owner is known or unknown. Pyle v. Springfield Marine Bank, Ill., 70 N. E. Rep. (2d) 257. 64 B. L. J. 321.

MATURITY

§851. Series of notes due on default as to one.

Where installment notes are transferred and pledged by payee as security for payee's note to transferee, it is held that the transferee is a holder in due course as to installments to mature in the future when the transfer is made after one or more but not all of the installments are due on its face, unless the past-due installments have not in fact been paid and he has notice of that fact. Bliss et al. v. California Co-op. Producers et al, Cal., 181 Pac. Rep. (2d) 369. 64 B. L. J. 781.

§853. Suit before maturity.

Where, by the terms of a promissory note, a specified sum of money is payable in installments, each installment as it becomes due constitutes a distinct cause of action for which suit may be maintained, and where there is no accelerating clause in the note a judgment for the delinquent installments does not bar a subsequent action for the balance due on said note. Kouri v. Toma, Okla., 175 Pac. Rep. (2d) 975. 64 B. L. J. 593.

MORTGAGES

Chattel Mortgages

Emergency farm mortgage.

Notes and mortgages given by a former debtor to his creditor to make up and secure the difference between the amount paid under a scaledown settlement pursuant to the Emergency Farm Mortgage Act of 1933 and the amount originally owed, are contrary to public policy and void. Cauble v. Trexler, N. C., 42 S. E. Rep. (2d) 77. 64 B. L. J. 708.

NATIONAL BANKS

§900. State control of national banks.

A state court, under existing federal law, is without the power and authority to grant preliminary restraint (before final judgment) against a national bank in a cause which relates to the internal government of the association, such as amending articles of association and executing proposed plan to increase its common stock. Bachman v. First-Mechanics National Bank of Trenton, N. J., 51 Atl. Rep. (2d) 114. 64 B. L. J. 510.

Where for purpose of imposing gross earnings taxes, the District of Columbia tax authorities by an administrative classification treats banks under state laws as incorporated savings banks and treats national banks as not savings bank, although both state and national banks operate both savings and commercial accounts, it is held that such administrative classification is not only improper but invalid inasmuch as it is not in harmony with taxing statute. Hamilton Nat. Bank v. District of Columbia, 156 Fed. Rep. (2d) 843. 64 B. L. J. 44.

§928. Action against national bank—action in foreign state.

Where a nonresident national banking corporation has its legal situs, its domicile, in a foreign state, it cannot be presumed to be doing business in Alabama and hence could not be forced to submit to the jurisdiction of the court. Ex parte Union Planters National Bank and Trust Co. of Memphis, Tenn., Ala., 31 So. Rep. (2d) 596. 64 B. L. J. 813.

NEGOTIABILITY

§942. Instruments referring to contract.

"Marginal notations" or memoranda placed on a bill or note at the time of the execution thereof with the intention of making them a part of the contract, constitute a part thereof and must be considered along with the provisions in the body of the instrument in arriving at the true intent of the parties. Baucom v. Friend, D. C., 52 Atl. Rep. (2d) 123. 64 B. L. J. 815.

NON-NEGOTIABLE PAPER

§978. Non-negotiable paper.

A note was made payable to "Marie H. Garrett in person no estate" three days after maker's death. It was held not a negotiable instrument within the definition of the Negotiable Instruments Law; and being a non-negotiable instrument consideration must be alleged and proven. In re Knauss' Estate, 66 N. Y. Supp. (2d) 828. 64 B. L. J. 424.

OFFICERS AND EMPLOYEES OF BANKS

§1066. Authority of officers in general.

An officer of a bank is not authorized to accept for deposit his own check on the bank given in payment of his personal debt. The payee of the check, in such a case, is charged with notice of his want of authority. Fine v. Harney County National Bank, Oreg., 182 Pac. Rep. (2d) 379. 64 B. L. J. 947.

§1068. Authority of president.

The president of a national bank is executive agent of directors to perform such duties as may be devolved upon him, or, by implied authority, duties which are fairly within ordinary routine of his business as president, and he is not the corporation, and cannot take place of governing board or incur liabilities outside ordinary business of bank without special authority. State v. First National Bank of Texhoma, Okla., 174 Pac. Rep. (2d) 259. 64 B. L. J. 143.

§1095. Liability of bank for cashier's act.

When, in answer to inquiries addressed to the bank apparently at the suggestion of a customer, the cashier makes fraudulent misrepresentations as to the status of a customer's account and the credit that had been granted, the cashier is acting within the scope of his authority. The bank, therefore, is liable for damages arising out of the fraudulent misrepresentation made by its cashier while acting within the scope of such employment. Nevertheless, the plaintiff is entitled

to recover only on proof of damage proximately resulting from the bank's fraud. Standard Surety & Casualty Co. of New York v. Plantsville National Bank, 70 Fed. Supp. 954. 64 B. L. J. 617.

§1097. Personal liability of cashier.

Where bank cashier permitted depositor to overdraw his account, knowing that the proceeds of the draft deposited by the depositor had not been realized, he was held liable to the bank for a breach of trust for exceeding his authority or for having acted negligently, if such conduct resulted in a loss to the bank. First National Bank of Peterstown v. Hansbarger, W. Va., 40 S. E. Rep. (2d) 822. 64 B. L. J. 285.

§1099. Criminial liability.

To make out a case of embezzlement of a bank's money, accused need not appropriate the property to his own use, but is guilty if he fraudulently appropriates it to the use of another. State v. Adams, Mo., 200 S. W. Rep. (2d) 75. 64 B. L. J. 695.

§1114. Authority of directors — ratification by directors.

Bank, which held notes secured by trust deed, was not required to enter a resolution on its minutes requesting the trustee to make the foreclosure, in order to collect its money loaned on the lands involved; any executive officer of the bank might do so. Texas Pacific Coal & Oil Co. v. Mulvihill, Miss., 27 So. Rep. (2d) 719. 64 B. L. J. 202.

§1125. Liability of directors generally — liability to purchasers of stock relying on false reports.

In selling stock owned by itself, a bank is bound by the fraud of its agents just as any other principal is bound by the fraud of its agents, if it accepts the benefit of their fraud. But where the stock sold is not owned by the bank itself, there is no responsibility on the part of the bank for the frauds or conspiracies entered into by its officers in the sale of stock. First and American National Bank of Duluth v. Conley, Wis., 24 N. W. Rep. (2d) 873. 64 B. L. J. 310.

PAYMENT

§1208. Payment in general.

In the absence of an expressed or implied agreement that the renewal note shall constitute absolute payment, the mere acceptance of such renewal note, even though we have a written recitation that it is received in settlement or payment of a prior note or obligation, is only conditional payment and does not effect an absolute discharge of such prior obligation. Holden v. Farwell, Ozmun, Kirk & Co., Minn., 27 N. W. Rep. (2d) 641. 64 B. L. J. 890.

In making a loan to a church, payee provided for the payment of the note without interest, but directed that in the event of her death, further obligations of the note were cancelled and terminated. The court found that the loan was not a gift inter-vivos or an attempted testamentary disposition. The note was a valid contractual obligation since on its face it was cancelled at her death. De Lapp v. Anderson's Adm'r., Ky., 203 S. W. Rep. (2d) 389. 64 B. L. J. 902.

§1209. Liability of party other than drawee.

The consent of an indorser, whether it be considered as express or implied, to the release of the principal debtor is not equivalent to an express reservation of rights within the meaning of the Negotiable Instruments Act that a person secondarily liable on the instrument is discharged by a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved. Howard National Bank & Trust Co. v. Newman, Vt., 50 Atl. Rep. (2d) 896. 64 B. L. J. 631.

§1216. Discharge of instrument.

A renunciation of claim on a promissory note must be in writing unless the instrument is delivered up to the person primarily liable thereon. Isbell v. Flippen, Va., 41 S. E. Rep. (2d) 31. 64 B. L. J. 419.

§1217. Cancellation of note by destruction.

A note in a torn condition is presumed cancelled by the holder thereof.

However such a presumption is one of fact and whether such mutilation of the note was intended by the holder is a question of fact to be determined by the circumstances and the evidence thereof. In re Lock's Will, 64 N. Y. Supp. (2d) 206. 64 B. L. J. 147.

§1241. Payment of checks — checks signed by agent.

Statute providing that whenever any depositor shall have authorized any person as agent to draw checks on bank against such account, bank, in absence of written notice to contrary, shall be justified in presuming that any check drawn by such agent in form or manner authorized by depositor, including checks drawn to agent's personal order, was drawn for a purpose authorized by depositor and within scope of agent's authority, is not ambiguous. Boston Insurance Company v. Wells Fargo Bank & Union Trust Co., Cal., 181 Pac. Rep. (2d) 84. 64 B. L. J. 767.

§1257. Check as payment.

Payee's mere acceptance of his debtor's check will not constitute payment of the debt in the absence of an express agreement to that effect, and without such agreement or consent, which may be shown from the circumstances and conduct of the parties, the debt is not discharged until the check is in fact paid in due course. Rettinghouse v. Krey Packing Co., Mo., 200 S. W. Rep. (2d) 584. 64 B. L. J. 885.

In the absence of explanation, the presumption arising from the delivery of a check is that it was delivered in payment of a debt and not given as a loan. Crawford v. Marshburn, 72 N. Y. Supp. (2d) 54. 64 B. L. J. 988.

§1258. Check is conditional payment merely.

Where a person receives a check which on its face is a negotiable instrument but with knowledge of conditions attached as to its negotiation, and subsequently presents the check to another as a negotiable instrument, absolute and unconditional, obtaining thereby $300 in cash, it was held that such person has obtained property by false pretense. Whatley v. State, Ala., 31 So. Rep. (2d) 662. 64 B. L. J. 989.

§1260. Check delivered to agent.

Where preliminary agreement for sale of ranch was arranged by broker for prospective buyer and seller, and buyer made check payable to broker and delivered it to agent of broker, it was held that the seller, not having title or right to the check, could not enforce the obligation represented by check after buyer stopped payment thereon. Kline v. Rogerson, District Court of Appeal, Cal., 181 Pac. Rep. (2d) 385. 64 B. L. J. 810.

PLEDGE AND COLLATERAL

§1269. Pledge and collateral in general.

By agreement trust company was to assume with reference to the liquidation of the assets which it took as collateral the responsibility to administer and manage the purchased assets, without any service charge to the corporation, giving said assets the same care and attention as though the assets remained in its own portfolio, and having all powers needful to the proper administration of said assets. It was held that the trust company was required to exercise such care as prudent business men exercise in regard to their own property of a similar kind under similar circumstances. Montclair Trust Co. v. Star Co., N. J., 50 Atl. Rep. (2d) 481. 64 B. L. J. 405.

Where payee pledged several notes as security on his loan from the bank, it was held that the notes were never placed upon the footing of bills of exchange since they were not delivered to the bank for the purpose of transferring them to it in such a manner as to make it the holder thereof in due course. Bellevue Commercial & Savings Bank v. Highfill, Ky., 202 S. W. Rep. (2d) 732. 64 B. L. J. 965.

§1284. Sale of collateral.

The rule of law that an officer making a sale cannot, either directly or indirectly, become a purchaser, nor can he bid for the property for him-

self or as the agent of another, is qualified in that at least he cannot do so without the consent of the creditor and the debtor. Faivret v. First National Bank in Richmond, 160 Fed. Rep. (2d) 827. 64 B. L. J. 689.

SAFE DEPOSIT COMPANIES

§1350. Liability of company to customer.

Where a bank receives bonds for safekeeping and for compensation, it becomes a bailee and its liability is to be determined by reference to the manner in which it discharged the obligations which it assumed as bailee. The test of the plaintiff's right to recover and of the defendant bank's liability is whether the defendant bank acted prudently and in good faith with relation to the securities entrusted to it for safekeeping. Albers v. Credit Suisse, 67 N. Y. Supp. (2d) 239. 64 B. L. J. 468.

SIGNATURE

Opinion to establish signature.

An assistant bank cashier who had been in the banking business thirty years and during that period of time had advanced through the whole organization from messenger to his present position and had dealt with signatures and endorsements practically every day was qualified and allowed to give his opinion to the court as to the comparison of signatures on certain checks in order to establish whether the signatures were in the same handwriting. State v. Atkins, Wash., 174 Pac. Rep. (2d) 427. 64 B. L. J. 332.

STATUTE OF LIMITATIONS

§1406. Suspension of statute.

A credit on a note in order to operate to toll the statute must be a voluntary payment and a payment made by and with authority from the person sought to be charged. Fairfax National Bank v. Burt, Okla., 173 Pac. Rep. (2d) 417. 64 B. L. J. 303.

§1407. Waiver of statute.

A contract provided that several notes would be placed in escrow for two years to abide the payment of a new note by the corporation in favor of holder and in the event of payment of note the entire claim would be thereby liquidated and the original notes delivered by the escrow agent to the corporation, and if the new note was not paid at maturity, the original notes would be redelivered to holder and the entire account made current. It was held that the contract was an acknowledgment in writing of the debt and took the claim from under the bar of statute of limitations. Dyer v. Lowe, Miss., 29 So. Rep. (2d) 324. 64 B. L. J. 818.

STOCK AND STOCKHOLDERS

§1419. Transfer and sale of stock.

The owner and holder of a certificate of bank stock has the right to have the stock transferred into his name on the books of the corporation and the illegal refusal of the corporation, on proper demand to make such transfer renders the corporation liable in damages to the owner of the stock. In such an action the measure of damages is the value of the stock at the time of the demand and refusal. Townsend v. Tattnall Bank, Ga., 39 S. E. Rep. (2d) 536. 64 B. L. J. 211.

§1440. Statutory liability in general of stockholders to creditors.

The Illinois constitutional provision imposing a double liability on every stockholder in a banking corporation or institution may be interpreted as applying solely to that class of stockholders over which the State had jurisdiction and therefore was valid when adopted although not expressly excluding federal banks. Henrys v. Raboin, Ill., 69 N. E. Rep. (2d) 491. 64 B. L. J. 188.

§1446.—Rights of holder of certificate of deposit.

A bank time deposit certificate that named person deposited stated sum, payable to order of himself or his named daughter in current funds six

months after date with interest, was unambiguous negotiable deposit certificate, payable to legal holder in due course, and hence passed on death intestate of depositor, who was such holder at time of his death, to all his heirs, not exclusively to named daughter. Reese v. First Nat. Bank of Bellville, Texas, 196 S. W. Rep. (2d) 48. 64 B. L. J. 8.

§1460. Assessment of stockholders.

Under the National bank act, Federal Reserve Act, sec. 23, 12 U. S. C. A. sec. 64, a stockholder of a national bank is responsible for the debts of the bank to the amount of the stock owned by him at the par value thereof in addition to the amount invested in such stock, and a contingent obligation to pay an assessment is rendered absolute from the date of the assessment by the comptroller of the currency, but there is no federal statute making distributees of a deceased stockholder of a national bank liable for the deceased stockholder's default. Anderson v. Moser, 156 Fed. Rep. (2d) 408. 64 B. L. J. 15.

There being no federal statute of limitations fixing the period within which suits must be brought to enforce the statutory double liability of stockholders of insolvent national banks, the period is to be determined by the law of the state in which the suit is brought. But when the statute of limitations begins to run depends on when, under the federal law, the Comptroller of the Currency, or his authorized agent, is empowered by federal law to bring suit. The period runs from the date for payment fixed by the Comptroller. Cope v. National Bank of Kentucky, U. S. Sup. Ct., 118 N. Y. L. J. 331. 64 B. L. J. 775.

USURY

§1564. What constitutes usury.

Where the transaction is in the form of a loan and the charges exceed the interest permitted by law, the loan is held to be usurious without any proof of an intent by the parties to make a usurious loan. Independent Foods, Inc., v. Lucas County Savings Bank, Ohio, 70 N. E. Rep. (2d) 139. 64 B. L. J. 513.

Contract whereby defendant agreed to give plaintiff one-quarter interest in all fees from construction job for lump sum advanced by plaintiff, and providing that, in event of termination of contract after one year from date, defendant would pay plaintiff for his one-fourth interest the lump sum of $15,000, provided for a joint adventure and not for a loan and hence defense of usury was not available when plaintiff sought amount due him under the contract. Martter v. Byers, Cal., 171 Pac. Rep. (2d) 101. 64 B. L. J. 123.

§1565.—Transactions held not usurious.

The usury statutes of Oklahoma do not apply to sales, but only to loans of money. Usury does not attach to the sale of an automobile for a time or credit price which exceeds the cash price on the same automobile. Henry v. P. & E. Finance Co., Okla., 174 Pac. Rep. (2d) 375. 64 B. L. J. 288.

A loan transaction which would be free from usury if the loan were paid at the agreed maturity date is not rendered usurious by the borrower's voluntary repayment of the loan before maturity, even though, by reason of such repayment, the amount of interest received by the lender exceeds lawful interest computed to the day the loan is paid; provided, of course, that the total interest received by the lender does not exceed lawful interest computed to the maturity date stipulated in the loan contract. Atlantic Life Insurance Company of Richmond, Va., v. Wolf, D. C., 54 Atl. Rep. (2d) 641. 64 B. L. J. 962.

Where promissory note stated that "this loan is non-interest bearing but in lieu of interest we agree to pay to you a sum equal to one-third of the profits of said business," it was held the loan of money was not made on usurious terms. The note was non-interest bearing, and the whole transaction amounted to putting capital into the venture with a guarantee of the return of the capital, but no guar-

antee of profit whatsoever. Mueller v. Brennan, 68 N. Y. Supp. (2d) 517. 64 B. L. J. 643.

§1569.—Commission, bonus, expenses, etc.

Where a loan is made in one state secured by mortgages on chattels and realty situated in another state, usury inheres in the loan and not in the property mortgaged to secure its payment, since mortgage is merely an incident to principal transaction, so that law of state where loan is made governs usury. St. Germain v. Lapp, R. I., 48 Atl. Rep. (2d) 181. 64 B. L. J. 29.

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